

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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OFFICE OF THE SECRETARY

In the Matter of)
)
VOICESTREAM WIRELESS)
CORPORATION)
)
Transferee,)
)
And)
)
COOK INLET REGION, INC.)
)
Transferor,)
)
Application for Consent to)
Transfer of Control.)

WT Docket No. 00-207,
DA 00-2397

OPPOSITION TO PETITION TO DENY

Cook Inlet Region, Inc. ("CIRI"),¹ pursuant to the Commission's Public Notice, DA 00-2397, released on October 24, 2000, opposes the Petition to Deny (the "Petition") filed by Jordan-Soldier Valley Telephone Co. d/b/a WITCO ("WITCO") primarily because WITCO has failed to present any evidence that the transfer will not serve the public interest.

On September 14, 2000, CIRI and VoiceStream Wireless Corporation ("VoiceStream") filed applications under sections 214 and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 214, 310(d), and the Department of Defense Appropriations Act of 2001,

¹ CIRI is an Alaska Regional Corporation organized under the Alaska Native Claims Settlement Act, 47 U.S.C. §§ 1601 *et seq.*

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Public Law No. 106-259, seeking Commission consent to a transfer of control of certain personal communications services (“PCS”) licensees (the “CIVS Entities”)² from CIRI to VoiceStream.

Each CIVS Entity is jointly owned by CIRI, as the sole manager or general partner, and by VoiceStream, as a non-controlling member or limited partner. As explained in detail in the public interest statement attached to the lead application filed in connection with the proposed transfer of control,³ CIRI is a notable success story for entrepreneur participation in telecommunications services. The success of the CIVS Entities is attributable in large part to the strength of the business relationship between CIRI and VoiceStream which has facilitated the construction of 64 PCS systems (10 of which are under construction) and the introduction of commercial service in 54 of the CIVS Entities’ licensed basic trading areas (“BTAs”).⁴ These figures include rural markets (approximated here as BTAs with fewer than 100 POPs per square mile), which account for 40 of the PCS systems constructed (including 9 of the systems currently under construction) and 31 of the market launches.⁵

CIRI believes that the business strategy employed in the systems subject to the transfer applications – to provide competitive wireless services using the GSM standard to customers all across the country – will not change upon consummation of the transfers of control of the CIVS Entities to VoiceStream. Indeed, both urban and rural markets will become part of a fully integrated and seamless national GSM network that will compete directly with existing

² The “CIVS Entities” include Cook Inlet/VoiceStream PCS, LLC, Cook Inlet/VS GSM II PCS, LLC, Cook Inlet/VS GSM III PCS, LLC, Cook Inlet/VoiceStream PV/SS PCS Holdings, L.P. and their licensee subsidiaries.

³ Lead Application, File No. 0000216961, Attachment 1 (“Lead Application”).

⁴ See Attachment 1, Affidavit of Craig Floerchinger, Vice President of Cook Inlet Region, December 1, 2000 (“Attachment 1”) at ¶ 9.

⁵ *Id.*

nationwide TDMA and CDMA networks, leading to increased competition, greater choice and lower prices for consumers.

WITCO's allegations are unfounded, unsupported and its Petition should be denied by the Commission because WITCO has failed to make a case against the transfers of control or to support adequately its generic allegations that the transaction would not serve the public interest. Specifically, WITCO's Petition fails on three grounds.

First, WITCO's assertion that VoiceStream has made no commitment to bring advanced services to rural areas, including Nebraska and Iowa, is inaccurate and further, WITCO presents no evidence to support its claim. It is and has been CIRI's and VoiceStream's mutual goal to construct a nationwide GSM network, a goal that can be accomplished only by providing service in a seamless national footprint, in urban and rural areas together. A strategy that includes initially deploying service in urban areas is not in any way incompatible with providing service in rural markets to meet the ultimate goal of providing seamless nationwide service. CIRI and VoiceStream have clearly demonstrated their commitment to rural markets through license acquisition, system construction and commercial launches. As a result of the transaction described in the transfer applications, VoiceStream will be better able to deploy rapidly its GSM service, including to rural markets, to compete more effectively with other nationwide carriers and to bring lower prices to wireless customers.⁶ In this way, the transaction will serve the public interest.

Despite WITCO's allegations that VoiceStream will shun rural markets, it also claims that small entities in rural markets will face strong competition if VoiceStream (with equity

⁶ Lead Application at 12.

capital from DT) invests further in the CIVS Entities. This would suggest that WITCO believes that VoiceStream will, in fact, build and operate rural systems. In any event, WITCO's arguments that the CIRI/VoiceStream transaction will result both in an increase in competition and a dearth of competition in rural markets are contradictory and unsupportable.

The fact remains that the CIVS Entities hold licenses in rural markets that must be constructed and are subject to build-out deadlines. CIRI and VoiceStream have repeatedly demonstrated their commitment to the construction of operational systems in rural markets. VoiceStream has consistently shown that it has all of the resources necessary to acquire licenses, build out and operate PCS systems. This transaction will provide the CIVS Entities with the financial and technical resources to foster competitive wireless services in all of its markets, both rural and urban. The existence of such strong, well-capitalized competitors in the marketplace is in the public interest.

Second, WITCO argues that because increased foreign investment could result if the VoiceStream and Deutsche Telekom ("DT") merger is consummated, the CIRI/VoiceStream and VoiceStream/DT transactions "should not be considered in isolation."⁷ The CIRI applications for transfer of control and the VoiceStream/DT proposed merger are governed by independent applications and properly are being treated separately by the Commission.⁸ Thus, WITCO's concerns about the impact of DT investments in U.S. carriers on competition in the U.S. should be raised in the VoiceStream/DT proceeding currently before the International Bureau, which

⁷ See Petition to Deny of WITCO at 4.

⁸ See VoiceStream Wireless Corporation, Powertel, Inc., and Deutsche Telekom AG Seek FCC Consent to Transfer Control of Licenses and Authorizations and Request Declaratory Ruling Allowing Indirect Foreign Ownership, Public Notice, IB Docket No. 00-187, DA 002251 (rel. Oct. 11, 2000); Lead Application, File No. 0000216961.

has the expertise to address such concerns.⁹ The transfer of control applications, at issue here, are in no way related to, and should be examined separate and apart from, the VoiceStream/DT merger, without regard to whether that merger is ultimately approved and consummated. This is simply the wrong proceeding for WITCO to raise merger related issues and it would be inappropriate for the Commission to address them here.

Third, WITCO has not met its burden to demonstrate that it is a party in interest and may simply be using this Petition to leverage its efforts to acquire spectrum held by the CIVS Entities in Iowa and Nebraska. To establish standing as a party in interest, a petitioner must allege facts sufficient to make a *prima facie* showing that the petitioner is a party in interest and, except for those facts of which official notice may be taken, the petition must be supported by the affidavit of a person with personal knowledge of the facts alleged.¹⁰ WITCO's Petition fails to meet these requirements.

In its Petition, WITCO makes generic allegations, unsupported by an affidavit or specific factual allegations, that it currently is seeking arrangements to provide advanced wireless service to rural portions of Nebraska and Iowa.¹¹ WITCO also does not articulate any injury that it will suffer other than by making general statements that the transaction is "unfair" and that WITCO

⁹ WITCO's reference to the Foreign Government Investment Act of 2000 (S. 2793) introduced in the Senate is irrelevant to this or any other transaction because it never became law. Petition at 5.

¹⁰ 47 C.F.R. § 1.939(d); 47 U.S.C. § 309(d)(1). In addition, to establish standing a petitioner must demonstrate (1) that grant of the application would cause the petitioner to suffer a direct harm; see *Los Angeles Cellular Telephone Co.*, 13 FCC Rcd 4601, 4603-4604 (CWD 1998), citing *AmericaTel Corp.*, 9 FCC Rcd 3993, 3995 (1994), citing *Sierra Club v. Morton*, 405 U.S. 727, 733 (1972); see also *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992); and (2) that there is a causal link between the claimed injury and the challenged action by showing that (a) the injury fairly can be traced to the challenged action; and (b) the injury would be prevented or redressed by the relief requested; see *Duke Power Co. v. Carolina Environmental Study Group, Inc.*, 438 U.S. 59, 74, 81 (1978).

¹¹ Petition at 1.

has not been able to gain access to spectrum.¹² WITCO, however, was not a bidder in Auction 22 and did not apply to be a bidder in Auction 35.¹³ In Auction 22, spectrum was available in rural Iowa and Nebraska and in Auction 35 spectrum is available in Nebraska.¹⁴ WITCO cannot claim an injury here when it failed to take advantage of these and other opportunities available to it to acquire spectrum. Further, WITCO does not explain how its alleged “injury” would be redressed by any action taken by the Commission. Regardless of how the Commission rules on CIRI’s applications, WITCO would not obtain any of the licenses held by the CIVS Entities for itself; and thus, WITCO would be in the same position that it is in today.¹⁵ WITCO has failed to make the requisite showing necessary to establish standing as a party in interest.

WITCO may also be inappropriately using the Commission’s procedures in order to gain access to spectrum. To the best of CIRI’s knowledge, prior to the filing of their Petition, WITCO had never contacted CIRI or the CIVS Entities regarding the acquisition of licenses in Iowa or Nebraska in the post-auction market.¹⁶ Following the filing of its Petition, however, it is CIRI’s understanding and belief that WITCO contacted VoiceStream’s counsel advising that WITCO’s Petition could be resolved through some form of spectrum access agreement.¹⁷ Given its failure to present any evidence in support of its petition or to establish standing and its post-filing contact with a transferee, WITCO’s Petition should be denied.

¹² *Id.* at 6-7.

¹³ *See* Attachment 1 at ¶¶ 4, 7.

¹⁴ *Id.* at ¶¶ 2, 5.

¹⁵ The CIVS Entities hold a 15 MHz C Block license in Omaha, Nebraska and a 10 MHz F Block license in Des Moines, Iowa. The CIVS Entities do not hold any PCS licenses in any other portion of Nebraska or Iowa. *See* Attachment 1 at ¶¶ 3, 10.

¹⁶ *See* Attachment 1 at ¶ 8.

¹⁷ *See* VoiceStream Opposition at 5.

* * * * *

For the foregoing reasons, WITCO's Petition should be denied.

Respectfully submitted,

Cook Inlet Region, Inc.



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December 1, 2000

ATTACHMENT 1

Affidavit of Craig Floerchinger

on behalf of

Cook Inlet Region, Inc.

December 1, 2000

AFFIDAVIT

STATE OF ALASKA)
)
CITY OF ANCHORAGE)

Mr. Craig Floerchinger declares that:

1. My name is Craig Floerchinger. I am the Vice President of Cook Inlet Region, Inc. ("CIRI"). CIRI holds the indirect controlling interest in personal communications services (PCS) licenses held by Cook Inlet/VoiceStream PCS, LLC ("CIVS I"), Cook Inlet/VS GSM II PCS, LLC ("CIVS II"), Cook Inlet/VS GSM III PCS, LLC ("CIVS III"), Cook Inlet/VoiceStream PV/SS PCS, L.P. ("CIVS LP") and their licensee subsidiaries (the "CIVS Entities"). CIRI also holds the indirect controlling interest in PCS licenses held by Cook Inlet/VS GSM V PCS, LLC ("CIVS V"). As such, I have personal knowledge of the facts set forth in this affidavit.

2. In Auction 22, a 15 MHz license was available in the Omaha, Nebraska basic trading area ("BTA") (BTA 332) and a 30 MHz license was available in the Des Moines, Iowa BTA (BTA 111) as well as several other licenses in Iowa and Nebraska and across the country.

3. CIVS I participated in Auction 22 as a designated entity and won multiple C Block PCS licenses, including a 15 MHz license for the Omaha, Nebraska BTA (BTA 332).

4. Neither Jordan-Soldier Valley Telephone Co. nor WITCO are listed on the Commission's Public Notice, issued on February 24, 1999, as having filed an application to participate in Auction 22. Based on this information, it is my understanding and belief that WITCO did not participate in Auction 22.

5. Although licenses are not available in Omaha, Nebraska or Des Moines, Iowa, there are other licenses available across the country in upcoming Auction 35 including licenses in Nebraska.

6. CIVS V filed a short form application to participate as a qualified entrepreneur in the Commission's upcoming Auction 35; the short form application was accepted for filing.

7. Neither Jordan-Soldier Valley Telephone Co. nor WITCO are listed on the Commission's Public Notice, issued on November 17, 2000, as having filed an application to participate in Auction 35. Based on this information, it is my understanding and belief that WITCO will not participate in Auction 35.

8. It is my understanding and belief that neither CIRI nor any of the CIVS Entities subject to the applications for transfer of control in WT Docket No. 00-207 have ever been contacted by WITCO with regards to gaining access to any of the CIVS Entities' license holdings in any market or specifically in rural Iowa or Nebraska through acquisition, spectrum access agreement or by any other available means.

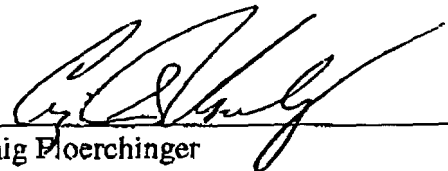
9. It is my understanding and belief that the CIVS Entities have constructed 64 PCS systems (10 of which are currently under construction) and introduced commercial service in 54 of the CIVS Entities' licensed BTAs. These figures include rural markets (approximated here as BTAs with fewer than 100 POPs per square mile), which account for 40 of the PCS systems constructed (including 9 of the systems currently under construction) and 31 of the market launches.

10. It is my understanding and belief that CIVS I acquired a 10 MHz F Block license for the Des Moines, Iowa BTA (BTA 111) from a subsidiary of Omnipoint Corporation on February 25, 2000.

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I hereby declare under the penalties of perjury that the foregoing is, to the best of my knowledge, true and correct.

Executed this 1st day of December, 2000.



Craig Floerchinger

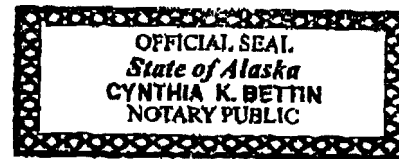
Signed and sworn to before me this 1st day of December, 2000.



Notary Public

My commission expires:

July 5, 2000



CERTIFICATE OF SERVICE

I, Christine E. Enemark, do hereby certify that the foregoing opposition was served on the parties listed below by hand this 1st day of December 2000.

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